

WILLARD K. TOM
General Counsel

LISA D. ROSENTHAL, Bar # 179486
KERRY O'BRIEN, Bar # 149264
EVAN ROSE, Bar # 253478
ERIC EDMONDSON, D.C. Bar # 450294
Federal Trade Commission
901 Market Street, Ste. 570
San Francisco, CA 94103
(415) 848-5100 (voice)
(415) 848-5184 (fax)
lrosenthal@ftc.gov
kobrien@ftc.gov
erose@ftc.gov
eedmondson@ftc.gov

Attorneys for Plaintiff
Federal Trade Commission

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

SWISH MARKETING, INC., a corporation,

MARK BENNING, individually and as an
officer of SWISH MARKETING, INC.,

MATTHEW PATTERSON, individually and
as an officer of SWISH MARKETING, INC.,
and

JASON STROBER, individually and as an
officer of SWISH MARKETING, INC.,

Defendants.

Case No. C09-03814 -RS

**SECOND STIPULATION AND
~~PROPOSED~~ ORDER TO
SUSPEND AND REVISE
DISCOVERY SCHEDULE**

Pursuant to Local Rule 6-2, the parties, by and through their respective attorneys, hereby stipulate to and respectfully request this Court suspend and revise the discovery schedule in this case so that the FTC may consider proposed settlements with the remaining individual

1 defendants.

2 1. On November 19, 2010, the parties participated in a settlement conference with
3 Magistrate Judge Spero.

4 2. During that settlement conference and over the past several weeks, the parties have made
5 great progress towards resolving this matter as it relates to the remaining individual defendants,
6 Mark Benning and Matthew Patterson. As a result of those talks, defendants Benning and
7 Patterson have signed stipulated final judgments that would resolve this case as to them. Those
8 settlements have not been formally approved by the Commission. If approved, the parties
9 anticipate that they will seek only limited additional fact discovery, if any.

10 3. At this time, the FTC and defendant Swish Marketing, Inc., do not expect to reach a
11 settlement in this matter. The FTC plans to file a motion for summary judgment as to defendant
12 Swish Marketing, Inc.

13 4. The parties hereby request the Court suspend temporarily discovery in this matter so that
14 the Commission may review the proposed settlements with defendants Benning and Patterson.

15 5. Thus, the parties request that the Court modify the discovery schedule in accordance with
16 the table below.

| Matter | Current Date | Proposed Date |
|---|---------------------|----------------------|
| Non-Expert Discovery Resumes | N/A | 2/28/2011 |
| Non-Expert Discovery Cut-Off | 1/28/2011 | 4/14/2011 |
| FTC's Designation of Expert Testimony and Reports | 2/7/2011 | 4/25/2011 |
| Defendants' Designation of Expert Testimony and Reports | 3/7/2011 | 5/23/2011 |
| Expert Discovery Cut-Off | 5/4/2011 | 7/19/2011 |

25 6. This motion is the second request for an extension of time relating to the discovery
26 schedule.

DATED: January 11, 2011

Attorneys for Plaintiff
FEDERAL TRADE COMMISSION

DATED: January 11, 2011

Attorneys for Defendants
SWISH MARKETING, INC.,
MATTHEW PATTERSON, and
JASON STROBER

DATED: January 11, 2011

Attorneys for Defendant
MARK BENNING

DATED: 1/12/11


RICHARD SEEBORG
UNITED STATES DISTRICT JUDGE